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New IRS Regulation

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The IRS issued a new regulation for tax professionals that will affect how we communicate with clients. The new regulation applies whenever a tax practitioner provides written tax advice to a client. Such advice may take the form of e-mail, fax, letter, or any other written communication.

The new regulation is primarily intended to curb abusive tax shelters. Taxpayers who have engaged in such transactions have been able to escape penalties by claiming that the tax advisory opinion led them to believe that the transaction was permissible. This new regulation is purposely vague because the IRS did not want to open any tax loopholes.

Under the new regulation, a taxpayer cannot rely on a tax opinion for protection from penalty unless the tax practitioner provides an opinion that comprehensively takes into account the following:

- all relevant facts and applicable laws
- the relationship between fact and law
- a conclusion as to the legal consequences of each tax issue
- the likelihood that the taxpayer will prevail if the IRS challenges the position taken

Penalties to tax preparers for giving written advice that does not meet the above requirements can be severe, including disbarment from practice.

The cost of securing such a comprehensive written opinion are prohibitive. A good alternative is to include a disclaimer on written advice provided to a client. Therefore our firm will include the following disclaimer on all written material provided to our clients:

"This written advice is not intended or written to be used, and cannot be used, by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer."

Please note that the use of this disclaimer does not change the quality of our service and the advice you have come to expect from us. Be assured that we will, as always, act diligently to meet your needs.

Sincerely,

Juda Kallus

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